

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6135 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH @ AJAY DAHYABHAI

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

#. The petitioner is preferred by the detenu, who came to be detained by virtue of an order passed on April 2, 1999, by the Commissioner of Police, Surat City, Surat.

#. The detenu sent his application addressed to the Honourable the Chief Justice and the same has been treated as a writ petition. The petitioner has not annexed any papers to the application. However, Rule was issued on August 19, 1999.

#. Today, when the matter came up for final hearing, Mr. H.H. Patel, learned Assistant Government Pleader, appearing for the respondents has made available the file of the Government in respect of the present detenu for perusal of this Court and, on considering the papers, the matter is decided on merits.

#. It appears that the detaining authority, in the grounds of detention took into consideration four offences registered against the detenu in respect of vehicular theft. The authority also took into consideration statements of two anonymous witnesses and decided to exercise powers under Section 9(2) of the PASA Act by not disclosing the identity of those persons. The detenu was in judicial custody when the order was passed. The authority found that the petitioner is a dangerous person and, on being released on bail, may continue his nefarious activities. Recording that it is not possible to resort to other less drastic remedy, the authority detained the detenu under the provisions of the PASA Act.

#. From the file, it is evidence that the statements of anonymous witnesses were recorded on 8th and 9th February, 1999, the same were verified by the detaining authority on 1st April, 1999 and the order was passed on 2nd April, 1999. The detaining authority exercised powers under Section 9(2) of the PASA Act and claimed privilege.

#. The facts of the case are clearly covered by a decision of a Division Bench of this Court in Kalidas C. Kahar v. State of Gujarat, 1993(2) GLR 1659. In that case, the detaining authority verified the statements on 16th October, 1992 and the order was passed on 17th October, 1992. The Court held that there was no sufficient time lag to enable the detaining authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. Here also, the statements were verified on 1st April, 1999 and the order was passed on 2nd April, 1999. The petition, therefore, deserves to be allowed on this count alone.

#. No affidavit in reply is filed by the respondent authorities.

#. In the above view of the matter, the petition deserves to be allowed and is hereby allowed. The order of detention dated 2nd April, 1999 in respect of the petitioner-detenu, Mahesh @ Ajay Dahyabhai is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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